



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 26, 1998

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR98-0252

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 112390.

The City of Garland (the "city") received a request for information relating to a fight which occurred at 1725 Patton Drive on January 24, 1997. You contend that portions of the requested information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Initially, we note that the submitted documents include search warrant affidavits. Article 18.01(b) of the Code of Criminal Procedure provides:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed.* [Emphasis added.]

Information specifically made public by law outside the Open Records Act may not be withheld pursuant to any of the act's exceptions to required public disclosure. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, we conclude that the city must release the search warrant affidavits if they have been executed.

Additionally, we note that documents filed with a court, such as arrest warrants, are generally considered public. *See e.g., Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Thus, the city must release any documents that have been filed with a court.

We will consider your arguments against disclosure for the remaining documents. Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;


(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

You state that the remaining documents relate to a pending criminal prosecution. Based upon this representation, we conclude that the release of these documents would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the remaining documents.

Information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You indicate that the city has already released the types of information that are considered to be front page offense report information. Accordingly, we conclude that the city may withhold the remaining documents from disclosure under section 552.108(a)(1). Of course, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 112390

Enclosures: Submitted documents

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(w/o enclosures)